

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Chair
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In the Matter of the Shared-Metering
Miscellaneous Tariff Proposed by Xcel Energy

ISSUE DATE: August 1, 2002

DOCKET NO. E-002/M-02-129
E-002/C-00-1563

In the Matter of the Complaint of Ila Whittaker,
Priscilla Harris and Community Action of
Suburban Hennepin County Against Northern
States Power Regarding Responsibility for
Shared Meter Charges

ORDER APPROVING TARIFF WITH
MODIFICATIONS AND CLOSING DOCKET
00-1563

PROCEDURAL HISTORY

On January 30, 2002, Northern States Power Company d/b/a Xcel Energy (Xcel or the Company) filed its proposed shared meter tariff. This tariff was in response to a complaint brought by Ila Whittaker and Priscilla Harris et al., in Docket No. E-002/C-00-1563, in response to each of these individuals being held responsible by Xcel for metered charges that included charges for service not only to each individual's own living area but also to other parts of the apartment building in which each of them lived. The proposed tariff is a result of efforts by the parties to reach a settlement of this "shared-meter" issue.

On February 26, 2002, Xcel filed supplemental comments identifying some minor modifications to the proposed tariff.

On February 28, 2002, the Energy CENTS Coalition (ECC) filed comments indicating general support for the proposal.

On March 21, and 22, 2002, the Department of Commerce (DOC) and the Residential and Small Business Utilities Division of the Office of the Attorney General (RUD-OAG) respectively, filed comments supporting the tariff proposal with recommendations.

On April 1, 2002, Xcel and the DOC filed reply comments.

This matter came before the Commission on July 11, 2002.

FINDINGS AND CONCLUSIONS

I. The Proposed Tariff

The proposed tariff establishes a new policy for handling shared meter situations. It clarifies and emphasizes the landlords' responsibilities in these situations, including the landlords' responsibility to advise the utility of a building's single-meter status, including the shared-meter situation.¹

Among other things, the tariff provides that upon discovery of a shared-meter situation the billing for the utility service will be changed to make the landlord the bill payer responsible and the customer of record for the account. A credit will be made to the tenant for the prior twelve months' billings (or the period of the tenancy if shorter) and the landlord will be billed for this historical period.

Parties would continue to have the ability to bring issues to the Commission's attention. Besides being able to avail themselves of the Commission's complaint process, parties could continue to turn to RUD-OAG sponsored mediation and other typical resolution processes.

The tariff includes a certification process to assure that the corrections to the underlying wiring or other systems are made to actually correct the problems resulting in the shared-meter situation, if a landlord wants to re-establish individual metered service. Under the tariff a landlord can be charged for verification that individual meters have been installed and appropriately wired.

II. The Positions of the Parties

A. Xcel

Xcel argued that the proposed tariff was in the public interest and that it was consistent with landlord-tenant statutes and with the Public Utilities Act and should be approved. The tariff makes it easier for tenants to receive refunds or credits of amounts they paid when there is a shared meter situation. Although the tariff limits credit to the previous twelve months or to the limit of their tenancy, if less than twelve months, some tenants may have been billed for utility service for a longer period of time. In that case, the tenant would still have recourse to recover overcharges from the landlord directly or through arbitration actions or the Commission complaint process.

Further, Xcel argued that although the tariff may seem harsh to landlords, it was a reflection of the landlord's responsibilities under the landlord-tenant statute. Xcel noted that the landlord was the party in the best position to determine that the wiring for individual units was limited to those units. If the landlord determined that the wiring was not limited to individual units, the landlord was in the best position to make appropriate changes.

¹ Pursuant to Minn. Stat. § 504B.215, subd. 2.

Xcel noted that there were policy questions that have not been resolved by this proposed tariff. For instance, if a tenant had been on a discounted low-income rate, such a rate may not be available to the landlord. This would likely result in the tenant seeing higher energy costs factored into his/her rent. Likewise, if a tenant received energy assistance as the customer of the utility, the amount of energy assistance the tenant may be eligible for when no longer a direct customer of the utility may be less. Xcel suggested that possible legislative changes may be necessary to address these issues and recommended pursuing these issues through a workgroup.

B. Energy CENTS Coalition

ECC agreed with Xcel that the proposed tariff is in the public interest, conforms to statutory requirements, is necessary to resolve the original complaint, and should be accepted.

ECC discussed several public policy concerns and recommended that the Commission establish a working group to address these concerns. The ECC concerns focused on the issues related to being or not being the customer of record. It cited a concern that a landlord's apportionment of single-metered building energy usage may not result in lower costs to tenants, particularly if landlords use a billing service to apportion these costs and add the administrative fees to the rent.

It also cited a concern that low income renters may not be eligible for as much assistance through the Energy Assistance Program if utility bills are included in the apartment rent. The ECC recommended that tenants be informed of the advantages and disadvantages of a change to the utility customer of record.

C. RUD-OAG

The RUD-OAG stated that the proposed tariff addresses a number of problems that arise from shared metering and recommended its approval, with revisions. Specifically, the RUD-OAG made the following recommendations to the tariff provisions:

1. the tariff should use the term "shared meter" in lieu of "single meter, mixed wiring" and "mixed plumbing" and include a definition of shared meter;
2. the tariff should require Xcel to investigate within ten business days of being alerted of a possible shared meter situation, and upon confirming that a shared meter situation does exist, adjust the customer's account and make the landlord the customer of record within thirty business days;
3. the tariff should more explicitly state that the Company's shared meter rates are the landlord's "utility service payments: and the ultimate residential consumer's

“utility costs.”² The tariff should also provide that landlords must individually meter buildings where required to do so by Minnesota law;

4. the tariff should be revised to require Xcel, upon request, to supply tenants with a written determination of the areas measured by a shared meter, the nature of the service, and the proportional amount of service registered on the shared meter for the tenant’s dwelling and for areas outside the dwelling;
5. the tariff should provide that Xcel will supply a tenant with past billing information it has that may substantiate a claim that a tenant is eligible for utility payment recovery from a landlord beyond what the tenant may get under the tariff from Xcel.

In addition the RUD-OAG recommended investigating the possible use of CIP funds for rectifying shared meter situations and exploring whether legislative changes are necessary to ensure that low-income tenants will still qualify for the low-income utility discount rate in shared-meter situations.

D. DOC

The DOC argued that overall the proposed tariff does comply with and encourage compliance with existing statutes. It recommended that the proposed tariff be approved with modifications.³ It recommended that the tariff be modified to assure the following:

1. both the tenant and landlord would be allowed to seek additional adjustment of charges by filing a complaint with the Commission or court action;
2. the landlord would be billed for the same period of time for which the tenant is issued a credit or refund;
3. any deposit required of the landlord not exceed two months’ gross bill or existing two months’ bill to comply with Minn. Rules part 7820.4500.

The DOC recommended that the Commission set up a work group regarding public policy issues not resolved only if the Commission is persuaded that a potentially better solution can be developed, and there are clear, achievable goals set out for the work group.

² RUD-OAG argued that this was necessary because the tariff does not adequately address the prohibition against landlords charging tenants more than their own costs for utility service.

³ The DOC set forth its proposed modifications to the tariff in Attachment A to its March 21, 2002 comments.

The DOC provided comments in response to the RUD-OAG recommendations. The DOC argued that the RUD-OAG comments recommended inclusion of language in Xcel's tariff that was intended to enforce landlord compliance with landlord-tenant statutes, which are outside the jurisdiction of the Commission (e.g. Minn. Stat. § 504B.215, subd. 2). The DOC questioned how such language could be included in Xcel's tariff.

Further, in response to the RUD-OAG's recommendation to investigate whether CIP funds could be used to eliminate shared meter situations, the DOC noted that any proposal for giving CIP funds to landlords for this purpose would need to show that the proposal is cost effective and results in a net reduction in energy use.

III. Xcel's Reply Comments to the RUD-OAG's Recommendations

Xcel's Response to the RUD-OAG's recommendations:

RUD-OAG Recommendation Number 1:

Xcel stated that using the term "shared meter" instead of "single meter" and including the definition that shared meter shall mean "any utility meter that measures service provided to a tenant's dwelling and also measures service to areas outside that dwelling" would be workable in the tariff. Xcel also agreed that it was willing to eliminate the terms "mixed plumbing" and "mixed wiring," which the RUD-OAG found to be confusing.

RUD-OAG Recommendation Number 2:

The time frames recommended by RUD-OAG seem reasonable. However, there may be circumstances where meeting these deadlines would be a challenge. For example, when Xcel's ability to investigate is dependent on the landlord/owner's cooperation and the landlord/building-owner denies access to Xcel, Xcel would make reasonable efforts to gain access to the building. If access continued to be denied, Xcel would assume the existence of a shared meter situation consistent with the tariff. However, in some cases it may be reasonable to continue efforts to obtain access and investigate for more than ten business days.

Meeting the time frames could also be difficult if the Company was deluged with shared meter investigation requests. Under such circumstances Xcel would need a reasonable time to adjust by bringing in additional resources to respond to the requests.

Xcel requested that the Commission recognize that in certain situations meeting the time frames set forth by the RUD-OAG would not be reasonable.

RUD-OAG Recommendation Number 3:

Xcel agreed to explicitly state that the Company's rates in a shared meter situation are the landlord's "utility service payments" and ultimate residential consumer's "utility costs." It also agreed that the tariff should provide that landlords must individually meter buildings where required by Minnesota law.

RUD-OAG Recommendation Number 4:

Xcel argued that it was willing to provide information, upon request, about the factual situation found upon its investigation and its conclusions relating to a shared meter situation. It argued that it should not be required to do a far more extensive investigation into proportional use estimates. Such an investigation would be speculative, time consuming and highly fact-specific to each individual situation and go far beyond the responsibility of Xcel.

RUD-OAG Recommendation Number 5:

Xcel did not object to providing a tenant with past billing information that may substantiate a further claim that the tenant may have as to the landlord/owner. However, Xcel argued that because compiling such information was labor intensive, this should only be required when requested to support a tenant's legal action against the landlord or building owner.

Finally, Xcel indicated its willingness to discuss, in a work group setting, some of the policy issues that have been raised.

IV. Xcel's Reply Comments to the DOC's Recommendations

Xcel accepted the DOC's comments regarding modifying the tariff to assure that the landlord will be billed for the same period of time for which the tenant is issued a credit or refund. It also agreed to the DOC's recommendation that any deposit required not exceed two months' gross billing or existing two months' billing.

The DOC also recommended that the tariff should be modified so that both the tenant and the landlord would be able to seek an adjustment of charges by filing with the Commission or court action. Xcel agreed to changing the tariff to indicate that the landlord may also question Xcel's findings and billing adjustments by filing a complaint before the Commission. However, Xcel argued that Minnesota statutes⁴ may give tenants the right to go to court against Xcel regarding its billing charges, but that statute did not give landlords a right to go to court against Xcel in regard to billing complaints.

⁴ Minn. Stat. § 504B.215.

Rather than accept the language suggested by the DOC, Xcel recommended that it add a sentence to the tariff that would give the landlord or building owner the opportunity to challenge Xcel's findings of a shared-meter situation and related billing adjustments by complaint to the Commission.

V. Commission Action

The Commission agrees with the parties that the proposed tariff is in the public interest and consistent with current law. The tariff addresses a shared-meter situation and makes the landlord, who is in the best position to know of the situation and to correct the situation, bear the responsibility for utility service under such circumstances. This is reasonable, gives some protection to an unknowing tenant and is in compliance with Minnesota law.

Both the DOC and the RUD-OAG recommended certain changes to Xcel's proposed tariff. The Company basically agreed to the DOC modifications. It accepted the DOC's recommendations to modify the tariff regarding the period for which the landlord would be billed and to alter the deposit required. The Company accepted the DOC's recommendation to give both the tenant and landlord the opportunity to challenge Xcel's findings of a shared meter situation and related billing adjustments by complaint to the Commission. These modifications, as accepted by the Company, are reasonable and will be approved.

Several of the modifications suggested by the RUD-OAG were accepted outright by the Company and those modifications agreed to by both parties will be approved by the Commission.

However, for several of the RUD-OAG modifications the Company stated good reasons for varying the RUD-OAG recommendation in order that the Company could reasonably comply. The RUD-OAG recommended that certain timelines for investigating a shared-meter situation and adjusting the customer's account be imposed. The Commission recognizes that in certain situations it would be unreasonable to require the company to comply with strict timelines but also recognizes that the Company should meet those timelines whenever feasible. For this reason the Commission will accept the modification recommended by the RUD-OAG as accommodated by the Company.

The Commission also recognizes and accepts the Company's willingness to provide information about the fact situation found upon its investigation of a possible shared-meter situation and the reason for its determination. However, the Commission also recognizes that further investigation by the Company into the complete wiring or plumbing to determine the "proportionment" may be beyond the Company's responsibility. The proposed tariff does not accept equitable proportionment as a solution in a shared meter situation and the Commission will not require the Company to provide extensive investigation to make such a determination. The Commission accepts the modification as accommodated by the Company.

Finally, the Commission agrees that it is not unreasonable to put limitations on when the Company would be required to provide a tenant with past billing information. This modification recommended by the RUD-OAG will also be accepted as accommodated by the Company.

Further, although there may be remaining policy issues in regard to shared meters, it would be premature to convene a working group on these issues prior to some experience with the new tariff. The Commission will not convene a working group on these issues at this time.

Lastly, the parties to the original complaint filed in Docket No. E-002/C-00-1563 have indicated that they have reached a settlement of the complaint; therefore, the docket will be closed.

ORDER

1. Xcel's proposed shared meter tariff incorporating the modifications recommended by the DOC and accepted by the Company, and the modifications proposed by the RUD-OAG and accepted or accommodated by the Company, is hereby approved.
2. Xcel shall file revised tariff pages incorporating these changes within 20 days of the service date of this Order.
3. Docket No. E-002/C-00-1563, *In the Matter of the Complaint of Ila Whittaker, Priscilla Harris and Community action of Suburban Hennepin County Against Northern States Power Regarding Responsibility for Shared Meter Charges*, is hereby closed.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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